IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-07-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

C.M.A.No.688 OF 2002

The Managing Director,
Tamil Nadu State Transport Corporation
(VPM DIV III) Limited,
Kancheepuram. ... Appellant (Respondent)

-vs-

Y.Selvaraj ... Respondent (Petitioner)

Appeal against the award and decree, dated 26.06.2001, made in MACT O.P.No.751 of 1998, on the file of Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Madras.

For appellant : Mr.P.G.Padmanabhan
For Respondent : Mr.N.M.Muthurajan

J U D G M E N T

Transport Corporation has filed this appeal, aggrieved over the award, dated 26.06.2001, made in MACT O.P.No.751 of 1998, on the file of Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Chennai, awarding a sum of Rs.86,000/-, for the injuries sustained by the respondent.

2. On 23.09.1997, at about 03.00 p.m., when the claimant/respondent was travelling in a bus, belonging to the appellant Corporation, bearing registration No.TN21 N 0365, which was going along the GST Road before ITI Colony Stop, the driver applied sudden brake, thereby the bus hit against a bridge, as a result of which the claimant, along with several other persons, sustained injuries.

3. The appellant Corporation totally denied the accident, stating that the accident did not occur due to rash and negligent driving of the bus by its driver, but, it was only due to his own negligence, the claimant sustained injuries.

4. R.W.1, Conductor of the bus, stated that on 23.09.1997, the bus did not involve in any accident and, since the road was damaged, the driver drove the bus slowly and carefully and that since the bus had a hit, the nearby passengers surrounded the bus, for a watch.

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5. Though it was stated that no such accident took place, from the counter filed by the appellant before the Tribunal, it is clear that the bus hit some object at the relevant time, thereby it attracted the attention of others. Further, the conductor also stated that the respondent did not travel by the bus and that the driver of the bus was no more. He also deposed that he did not know whether seven or eight passengers sustained injuries.

6. A cumulative effect of the averments in the counter and the oral testimony of R.W.1 would pave the way to conclude that the accident occurred due to rash and negligent driving of the bus by its driver and that the respondent, who travelled in the bus, sustained injuries.

7. Coming to the quantum of compensation, Ex.P-4 is the Pay Slip, which shows that the respondent was drawing a sum of Rs.5,812/- per month, by working as Record Keeper-cum-Cashier in State Bank of India, Karunguli.

8. Since it was contended before the Tribunal by the respondent that he could not attend the work for three months as a result of the accident and thereby he lost his salary for the said period, the Tribunal awarded a sum of Rs.17,500/- under the said account.

9. Learned counsel for the respondent has drawn the attention of this Court to a Division Bench decision of this Court in B.Anandhi v. R.Latha, 2002 ACJ 233, in which it is held that when the injured remained on leave for a certain period and though he received leave salary for the said period, he is entitled for compensation for loss of leave. The operative portion of the said decision reads thus :

> "13. Because of the injury sustained by him in the accident, the claimant had to be on leave for a period of four months for taking treatment. So, he was constrained to apply for leave because of this accident and the fact that he received salary for this period is not a ground to contend that the petitioner is not entitled get compensation for loss of earning for this period. Accordingly, we confirm the award passed by the Tribunal in this aspect."

10. In view of the above decision, awarding a sum of Rs.17,500/- for loss of leave cannot be found fault with. Further, for transport expenses, a sum of Rs.1,000/-; for 'extra nourishment', a sum of Rs.2,000/- and for damage to clothes, a sum of Rs.500/- were awarded by the Tribunal, which, in my view, are proper.

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11. The respondent produced Exs.P-2 and P-3, to show that he underwent treatment in Bone Setting Hospital, Puthur, Andhra Pradesh, for which he incurred a sum of Rs.10,000/-. For pain and suffering, a sum of Rs.15,000/-; for medical expenses, a sum of Rs.5,000/- and for personal attendants of the claimant, a sum of Rs.5,000/-, as against the claim of Rs.10,000/-, were awarded, which are reasonable.

12. Ex.P-1 is the Out-Patient Ticket, issued to the respondent by the Government Hospital, Chengalpat. The respondent was examined by P.W.2, doctor, who issued Ex.P-8, Disability Certificate, stating that the respondent could not raise his hand above 90 degrees; he could not lift heavy articles and that he was suffering from permanent disability to the extent of 45%. For disability, the Tribunal awarded a sum of Rs.40,000/-, which, I feel, is just and proper.

13. The Tribunal has rightly considered all the aspects and awarded a total compensation of Rs.86,000/-, under various heads. Therefore, there is no need to interfere with the findings of the Tribunal.

14. Appeal is dismissed. No costs.

dixit

Sd./
Asst.Registrar

/True Copy/

Sub-Asst. Registrar.

To
1. The Registrar,
Court of Small Causes, Chennai.

2. The Motor Accident Claims Tribunal
(VI Judge, Court of Small Causes),
Madras.

3. The Record Keeper
V.R.Section, High Court, Madras.

. 1 cc to Mr. P.K. Padmanabhan, Advocate SR. 40657.

. 1 cc to Mr. N.M. Muthurajan, Advocate SR. 40719.
RL (CO)
BS

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